

Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 28: MANUFACTURERS, DISTRIBUTORS
AND DEALERS OF BEVERAGE CONTAINERS

§1866. APPLICATION

1. Dealer acceptance. Except as provided in this section, a dealer may not refuse to accept from any consumer or other person not a dealer any empty, unbroken and reasonably clean beverage container of the kind, size and brand sold by the dealer, or refuse to pay in cash the refund value of the returned beverage container as established by section 1863-A. This section does not require an operator of a vending machine to maintain a person to accept returned beverage containers on the premises where the vending machine is located.

[1991, c. 819, §6 (AMD) .]

2. Permissive refusal by dealer. A dealer may refuse to accept from a consumer or other person and to pay the refund value on any beverage container, if the place of business of the dealer and the kind, size and brand of beverage container are included in an order of the department approving a redemption center under section 1867.

[1975, c. 739, §16 (NEW) .]

2-A. Limitation or number of returnables accepted. A dealer may limit the total number of beverage containers which he will accept from any one consumer or other person in any one business day to 240 containers, or any other number greater than 240.

[1979, c. 450, (NEW) .]

2-B. Limitation on hours for returning containers. A dealer may refuse to accept beverage containers during no more than 3 hours in any one business day. If a dealer refuses to accept containers under this subsection, the hours during which he will not accept containers shall be conspicuously posted.

[1979, c. 456, (NEW) .]

3. Distributor acceptance. A distributor may not refuse to accept from any dealer or local redemption center any empty, unbroken and reasonably clean beverage container or any beverage container that has been processed through an approved reverse vending machine that meets the requirements of rules adopted by the department pursuant to this chapter of the kind, size and brand sold by the distributor or refuse to pay to the dealer or local redemption center the refund value of a beverage container as established by section 1863-A.

[2003, c. 499, §5 (AMD) .]

3-A. Obligation to preserve recycling value. Notwithstanding subsection 5, a distributor or its agent may refuse to accept, or pay the refund value and handling costs to a dealer, redemption center or other person for, a beverage container that has been processed by a reverse vending machine in a way that has reduced the recycling value of the container below current market value. This subsection may not be interpreted to prohibit a written processing agreement between a distributor and a dealer or redemption center and does not relieve a distributor of its obligation under subsection 5 to accept empty, unbroken and reasonably clean beverage containers. The department shall adopt rules to establish the recycling value of beverage containers under this subsection and the rules may authorize the use of a 3rd-party vendor to determine if a beverage container has been processed by a reverse vending machine in a manner that has reduced the recycling value

below current market value. The rules must outline the method of allocating among the parties involved the payment for 3rd-party vendor costs. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2007, c. 299, §3 (NEW) .]

4. Reimbursement of handling costs. Reimbursement of handling costs is governed by this subsection.

A. In addition to the payment of the refund value, the initiator of the deposit under section 1863-A, subsections 1, 2 and 4 shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863-A, in an amount that equals at least 3¢ per returned container for containers picked up by the initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1, 2004 and before March 1, 2010 and at least 4¢ for containers picked up on or after March 1, 2010. The initiator of the deposit may reimburse the dealer or local redemption center directly or indirectly through a party with which it has entered into a commingling agreement. [2009, c. 405, §1 (AMD) .]

B. In addition to the payment of the refund value, the initiator of the deposit under section 1863-A, subsection 3 shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863-A in an amount that equals at least 3¢ per returned container for containers picked up by the initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1, 2004 and before March 1, 2010 and at least 4¢ for containers picked up on or after March 1, 2010. The initiator of the deposit may reimburse the dealer or local redemption center directly or indirectly through a contracted agent or through a party with which it has entered into a commingling agreement. [2009, c. 405, §2 (AMD) .]

C. The reimbursement that the initiator of the deposit is obligated to pay the dealer or redemption center pursuant to paragraph A or B must be reduced by 1/2¢ for any returned container that is subject to a qualified commingling agreement that allows the dealer or redemption center to commingle beverage containers of like product group, material and size. A commingling agreement is qualified for purposes of this paragraph if the department determines that 50% or more of the beverage containers of like product group, material and size for which the deposits are being initiated in the State are covered by the commingling agreement or that the initiators of deposit covered by the commingling agreement are initiators of deposit for wine containers who each sell no more than 100,000 gallons of wine or 500,000 beverage containers that contain wine in a calendar year. Once the initiator of deposit has established a qualified commingling agreement for containers of a like product group, material and size, the department shall allow additional brands to be included from a different product group if they are of like material. The State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, shall make every reasonable effort to enter into a qualified commingling agreement under this paragraph with every other initiator of deposit for beverage containers that are of like product group, size and material as the beverage containers for which the State is the initiator of deposit. [2011, c. 429, §2 (AMD); 2011, c. 429, §9 (AFF) .]

D. Paragraphs A, B and C of this subsection do not apply to a brewer who annually produces no more than 50,000 gallons of its product or a bottler of water who annually sells no more than 250,000 containers each containing no more than one gallon of its product. In addition to the payment of the refund value, an initiator of deposit under section 1863-A, subsections 1 to 4 who is also a brewer who annually produces no more than 50,000 gallons of its product or a bottler of water who annually sells no more than 250,000 containers each containing no more than one gallon of its product shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863-A in an amount that equals at least 3¢ per returned container. [2009, c. 405, §3 (AMD) .]

E. Notwithstanding provisions of this subsection to the contrary, if a commingling agreement for a product group was filed with the department by March 1, 2004, an initiator of deposit, whether or not a party to that agreement, is not required to pay the 1/2¢ handling fee increase required by this subsection until July 1, 2004 for beverage containers in that product group picked up by the initiator between March 1, 2004 and July 1, 2004. Beginning July 1, 2004, an initiator of deposit shall pay the 1/2¢ handling

fee increase for beverage containers in that product group picked up by the initiator between March 1, 2004 and July 1, 2004 that are not covered by a qualified commingling agreement as of July 1, 2004. [2003, c. 700, §1 (NEW); 2003, c. 700, §6 (AFF).]

[2011, c. 429, §2 (AMD); 2011, c. 429, §9 (AFF) .]

5. Obligation to pick up containers. The obligation to pick up beverage containers subject to this chapter is determined as follows.

A. A distributor that initiates the deposit under section 1863-A, subsection 2 or 4 has the obligation to pick up any empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the distributor from dealers to whom that distributor has sold those beverages and from licensed redemption centers designated to serve those dealers pursuant to an order entered under section 1867. A distributor that, within this State, sells beverages under a particular label exclusively to one dealer, which dealer offers those labeled beverages for sale at retail exclusively at the dealer's establishment, shall pick up any empty, unbroken and reasonably clean beverage containers of the kind, size and brand sold by the distributor to the dealer only from those licensed redemption centers that serve the various establishments of the dealer, under an order entered under section 1867. A dealer that manufactures its own beverages for exclusive sale by that dealer at retail has the obligation of a distributor under this section. The commissioner may establish by rule, in accordance with the Maine Administrative Procedure Act, criteria prescribing the manner in which distributors shall fulfill the obligations imposed by this paragraph. The rules may establish a minimum number or value of containers below which a distributor is not required to respond to a request to pick up empty containers. Any rules promulgated under this paragraph must allocate the burdens associated with the handling, storage and transportation of empty containers to prevent unreasonable financial or other hardship. [1991, c. 819, §8 (AMD).]

B. The initiator of the deposit under section 1863-A, subsection 3 has the obligation to pick up any empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the initiator from dealers to whom a distributor has sold those beverages and from licensed redemption centers designated to serve those dealers pursuant to an order entered under section 1867. The obligation may be fulfilled by the initiator directly or indirectly through a contracted agent. [1991, c. 819, §8 (AMD).]

C. An initiator of the deposit under section 1863-A, subsection 2, 3 or 4 has the obligation to pick up any empty, unbroken and reasonably clean beverage containers that are commingled pursuant to a commingling agreement along with any beverage containers that the initiator is otherwise obligated to pick up pursuant to paragraphs A and B. [2003, c. 499, §7 (NEW).]

D. The initiator of deposit or initiators of deposit who are members of a commingling agreement have the obligation under this subsection to pick up empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the initiator from dealers to whom a distributor has sold those beverages and from licensed redemption centers designated to serve those dealers every 15 days. The initiator of deposit or initiators of deposit who are members of a commingling agreement have the obligation to make additional pickups when a redemption center has collected 10,000 beverage containers from that initiator of deposit or from the initiators of deposit who are members of a commingling agreement. [2013, c. 275, §1 (NEW).]

The obligation of the initiator of the deposit under this subsection may be fulfilled by the initiator directly or through a party with which it has entered into a commingling agreement. A contracted agent hired to pick up beverage containers for one or more initiators of deposit is deemed to have made a pickup at a redemption center for those initiators of deposit when it picks up beverage containers belonging to those initiators of deposit.

[2013, c. 275, §1 (AMD) .]

5-A. Plastic bags. A dealer or redemption center has an obligation to pick up plastic bags that are used by that dealer or redemption center to contain beverage containers. Plastic bags used by a dealer or redemption center and the cost allocation of these bags must conform to rules adopted by the department concerning size and gauge. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 405, §4 (NEW) .]

6. Distributors reports and payments.

[1991, c. 528, Pt. R, §2 (RP); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. R, §2 (RP) .]

7. Deposit transaction account.

[1995, c. 395, Pt. P, §11 (AFF); 1995, c. 395, Pt. P, §2 (RP) .]

8. Application to containers originally sold in the State. The obligations to accept or take empty beverage containers and to pay the refund value and handling fees for such containers as described in subsections 1, 2, 3, 4 and 5 apply only to containers originally sold in this State as filled beverage containers. A person who tenders to a dealer, distributor, redemption center or bottler more than 48 empty beverage containers that the person knows or has reason to know were not originally sold in this State as filled beverage containers is subject to the enforcement action and civil penalties set forth in this subsection. At each location where customers tender containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch in height with the following information: "WARNING: Persons tendering containers for redemption that were not originally purchased in this State may be subject to a fine of the greater of \$100 per container or \$25,000 for each tender. (32 MRSA Section 1866)." A person who violates the provisions of this subsection is subject to a civil penalty of the greater of \$100 for each container or \$25,000 for each tender of containers.

[1995, c. 85, §1 (AMD) .]

9. License revocation. The department may revoke the license of a dealer or redemption center that has been adjudged to have committed a violation of this section.

[2007, c. 299, §4 (NEW) .]

10. Bulk redemption. In order to prevent fraud from the redemption of beverage containers not originally sold in this State, this subsection governs the redemption of more than 2,500 beverage containers.

A. A person tendering for redemption more than 2,500 beverage containers at one time to a dealer or redemption center must provide to the dealer or redemption center that person's name and address and the license plate number of the vehicle used to transport the beverage containers. The dealer or redemption center redeeming these beverage containers shall forward that information to the department within 10 days, and the information must be kept on file for a minimum of 12 months. [2009, c. 405, §5 (NEW) .]

B. After complying at least once with the requirements of paragraph A, a person need not comply with paragraph A each subsequent time that person tenders to a dealer or redemption center for redemption more than 2,500 beverage containers if:

- (1) All of the containers were collected at one location in this State;
- (2) All proceeds of the refund value benefit a nonprofit organization that has been determined by the United States Internal Revenue Service to be exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3); and

(3) The person tendering the containers for redemption signs a declaration indicating the person's name, the address of the collection point and the name of the organization or organizations that will receive the refund value. [2009, c. 405, §5 (NEW) .]

[2009, c. 405, §5 (NEW) .]

11. Private right of action; containers not originally sold in the State. An initiator of deposit may maintain a civil action in Superior Court against a person, other than a local redemption center licensed in accordance with section 1871-A, that tenders to a redemption center or retailer more than 48 empty beverage containers that the person knows or has reason to know were not originally sold in this State as filled beverage containers. If the initiator of deposit prevails in any action, the initiator of deposit is entitled to an award of reasonable attorney's fees and court costs, including expert witness fees.

[2011, c. 429, §3 (NEW) .]

SECTION HISTORY

1975, c. 739, §16 (NEW). 1979, c. 450, (AMD). 1979, c. 456, (AMD). 1979, c. 735, (AMD). 1987, c. 722, (AMD). 1989, c. 470, §§1,3 (AMD). 1989, c. 585, §§D6,D11 (AMD). 1989, c. 869, §§C4,5,12,15 (AMD). 1991, c. 528, §§R2,3 (AMD). 1991, c. 528, §§R18,RRR (AFF). 1991, c. 591, §§R2,3 (AMD). 1991, c. 591, §R18 (AFF). 1991, c. 819, §§6-9 (AMD). 1993, c. 703, §1 (AMD). 1995, c. 85, §1 (AMD). 1995, c. 395, §P2 (AMD). 1995, c. 395, §P11 (AFF). RR 2003, c. 1, §34 (COR). 2003, c. 499, §§5-7 (AMD). 2003, c. 688, §E1 (AMD). 2003, c. 700, §1 (AMD). 2003, c. 700, §6 (AFF). 2007, c. 299, §§3, 4 (AMD). 2009, c. 405, §§1-5 (AMD). 2011, c. 429, §§2, 3 (AMD). 2011, c. 429, §9 (AFF). 2013, c. 275, §1 (AMD).

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